The substantive question then arises whether the complainant or the owner has a better right to the gold coin. It was conceded that if Talib had stolen the coin the pawnbroker would have acquired no right to it. [*See Rex* v *Nadaison*, 4 Mal.L.J. 148] and the learned Deputy Public Prosecutor argued that on the evidence Talib might have been accused and convicted of theft, if he had the *animus furandi* at the moment when he took possession of the gold coin from the complainant. It is quite impossible to infer that Talib was guilty of stealing as no evidence was called and in fact he pleaded guilty to criminal breach of trust. The point is similar to the one that arises in England as to whether the accused is guilty of obtaining by false pretences or of larceny by a trick, and I accept the Judgment of the majority of Court of Appeal in England in *Folkes* v. *King*, (1923) 1 K.B. 282, that when the owner puts an agent in possession of the article, the point becomes immaterial, and I would refer to the following passage from the judgment of Scrutton, L.J at p. 306 of the report:—

> "On this point I take the view taken by Channell, J. and Vaughan Williams and Kennedy, L.JJ., all very experienced in trying criminal cases, that where an owner delivers goods to an agent, intending not only that he shall have possession, but shall dispose of the property, it is immaterial that the agent, ostensibly agreeing to the contract of agency, yet secretly intends to disregard it."

This passage is cited with approval by the Court of Appeal in the more recent case of *London Jewellers Ltd.* v. *Attenborough*, (1934) 2 K.B. 206 at p. 219.

It appears to me that section 2 of the Factors Act applies and I would refer to the Judgment of Scrutton L.J. in *Folkes* v. *King*, (1923) 1 K.B. 282 at page 306 where he says:—

> "The purport of the Act seems to be that an ostensible mercantile agent, ostensibly in possession of goods, can give a good title in the ordinary course of business to a *bona fide* purchaser, provided that he proves that the owner intended the agent to have possession of the goods."

For the purpose of that Act Talib was a mercantile agent. He had possession of the goods with the consent of the true owner and accordingly could either sell or pledge them. There is no evidence that the pawnbrokers were not acting in good faith and they are accordingly entitled to the possession of the gold coin as security for the money advanced.

Magistrate's Order Reversed.

Solicitors for the Applicants—

Allen & Gledhill.

[APPELLATE CRIMINAL JURISDICTION]
BURTON, Ag. C.J.
August 9, 1935.

REX v. A. L. B. SWAINE

[SINGAPORE MAGISTRATE'S APPEAL
No. 17 of 1935]

Penal Code, section 426—mischief.

The complainant was a squatter on land belonging to the Singapore United Rubber Plantations Ltd. and paid a rent of $1 per month. The complainant admitted that he had broken the terms of his contract and that he was thereby rendered liable to expulsion. The Manager of the estate expelled him without notice and caused his house to be demolished by sawing through the uprights embedded in the ground. He was charged with the offence of mischief by pulling down an attap dwelling house and poultry shed.

Held that though the complainant has given the estate just grounds to expel him and though he was probably no more than a tenant at will he was nevertheless entitled to notice of the estate's intention to expel him and a reasonable time to demolish his house and remove his goods and that the appellant was correctly convicted.

Magistrate's Appeal.

Coltart for the Appellant.

Worley, Deputy Public Prosecutor, for the Crown.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

BURTON, AG. C.J.—The appellant was convicted of the offence of mischief under section 426 of the Penal Code and sentenced to a fine of $50.

The complainant Ng Hock Su was a squatter on some land belonging to the Singapore United Rubber Plantations Ltd.; he occupied a piece of land at a rental of $1 a month. This he paid regularly till in July, 1934 the rent was increased and a sum of $1.50 demanded. This led to an affray and Ng Hock Su was convicted of causing hurt to the Mandor who attempted to collect the rent.

The complainant occupied the land under a Permit signed by the Manager in these terms;

> Received from Eng Hock Su the sum of $2 being licence fee to occupy and plant a plot of land. . . .

and the Permit is subject to the conditions:

> "This permit is issued subject to conditions on reverse and is cancellable at any time without notice or compensation."

This then is the agreement under which Ng Hock Su held. He was not a bare licensee, but a licensee with a grant [*Hurt* v. *Picture Theatre Ltd.*, (1915) 1 K.B. 1] and he was I think entitled to remain in possession unless he has come within a special term of the contract which renders him liable to expulsion. Ng Hock Su admits that he has: he says:

> "I know it is against the rule to fight. I am aware that if the rules are broken I am liable to be sent off."

When Ng Hock Su caused hurt to the Mandor, the Manager sent for the Police and he was arrested. While he was in custody, and

without notice to him the Manager caused his house to be demolished by sawing through the uprights embedded in the ground, with the result that the house collapsed and some poultry escaped and was lost.

It is here that I think the Manager was wrong. Though Ng Hock Su had given the Estate just grounds to expel him, and though he was probably no more than a tenant at will, he was nevertheless entitled to notice of the Estate's intention to expel him and a reasonable time to demolish his house and remove his goods, which is as Willis, J. said in *Cornish* v. *Stubbs* 5 C.P. at p. 339 a right annexed by law in the case of a tenant at will. It was not seriously argued that the house is not moveable property. I think it is generally conceded that such houses are. But whether they are or not, is not essential to this conviction because mischief was committed to the live-stock. However the act of mischief is laid in the charge as "pulling down an attap dwelling house and poultry shed" and I think that correctly represents the offence.

The appellant cannot plead that he did this *bona fide*, because he has made a mistake not of fact but of what his legal powers are to enforce the contract and is not within the protection of section 79 of the Penal Code.

I think therefore he was correctly convicted and I dismiss the appeal.

Appeal dismissed.

Solicitors for Appellant: *Rodyk & Davidson.*

[COURT OF CRIMINAL APPEAL]
WHITLEY, TERRELL & GORDON-SMITH, JJ.
October 5, 1935.

REX v. VELAYUTHAN

[CRIMINAL APPEAL No. 4 of 1935]

Ordinance No. 53 (Evidence), Section 157—uncorroborated evidence.

In cases of sexual offences such as rape where evidence is given by a young girl the Court must be satisfied that the danger of convicting upon the uncorroborated evidence of the girl was present to the minds of the jury. Acceptance of the unsworn evidence of the child should be subject to the same principles of rules of practice as apply to the acceptance of the evidence of accomplices.

Lee Mion v. *Public Prosecutor*, 3 Mal. L.J. 124 followed.

Petition referred by H.E. the Governor to the Court of Criminal Appeal under Section 21 (a) of Ordinance No. 5 of 1931 (Court of Criminal Appeal).

The facts and arguments are sufficiently set out in the Judgment of the Court.

Goho, for Appellant.

Worley, Deputy Public Prosecutor, for Crown.

At the conclusion of the hearing the Court allowed the appeal and quashed the conviction intimating that they would give their reasons in writing later. The judgment of the Court comprising Whitley, Terrell and Gordon-Smith, JJ. was delivered by Whitley, J.

Cur. Ad. Vult.

WHITLEY, J.—This was a Petition referred by His Excellency the Governor to the Court of Criminal Appeal under section 21 (a) of Ordinance No. 5 of 1931 (Court of Criminal Appeal).

The Appeal was heard by us on the 5th day of September when we allowed the Appeal and quashed the conviction, intimating that we would give our reasons in writing later.

The Appellant was tried on a charge of rape before Burton, Acting Chief Justice, with a Common Jury, on the 24th day of April, 1935, and he was found guilty by a majority of six to one. The learned Acting Chief Justice agreed with the verdict of the majority, and the Appellant was convicted and sentenced to Five Years' Rigorous Imprisonment.

The case for the prosecution depended almost entirely upon the evidence of the complainant, a Tamil girl about ten years of age named Govindammah. According to her the Appellant had sexual intercourse with her at the house in which she lived upon a number of occasions during the week or weeks prior to the 11th day of March, 1935 on which date she left the coolie lines, being found some days later in Malacca.

She was the adopted child of the Appellant and his mistress Mangatal, and lived with them in an isolated attap house. During the period in question Mangatal and her adopted son Krishnan (brother of the Complainant) were not sleeping in this house, but used to pay frequent visits. The only persons who slept in the house were the Appellant, the Complainant, and a man named Pusari whose age was given as 40 to 50, and who was referred to by the witnesses as "the old man." This man was not called as a witness.

According to the girl the offences were committed during the night. In view of her age the question of whether or not she consented was immaterial. She left the house on the 11th day of March, 1935, because of the pain she was feeling. She slept for five nights at a house in Merlimau, where she made no complaint, and then went to Malacca, where she told a clerk in the Labour Office that she had been beaten by her step-father and step-mother. He took her to the Police Station and she there made a report in which she complained that the Appellant had raped her.

The medical evidence established that the injuries to the girl must have been caused before the date of her disappearance from her own house. The Appellant, in his evidence, denied having interfered with the girl, and suggested that she had falsely charged him because he used to beat and scold her for not doing her work properly. The girl, in her evidence, admitted that he used to beat her, but she bore no marks such as to suggest that he had done so immoderately.

Counsel for the Appellant based his appeal upon several grounds. He contended that the evidence of the Complainant was inadmissible,